

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:PSI:B02
PLR-128340-09
Date:
September 17, 2009

Legend

X =

Y =

State =

Month1 =

Month2 =

Date =

Year1 =

Year2 =

Dear _____ :

This responds to a letter dated June 5, 2009, and subsequent correspondence, submitted on behalf of X and Y, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file certain elections.

The information submitted states that X is a limited liability company formed under the laws of State in Month1. X is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8). X was eligible to elect to be classified as

an association taxable as a corporation effective on Date. However, no Form 8832, Entity Classification Election, was timely filed for X.

The information submitted further states that Y, a REIT, indirectly owns an interest in X. Beginning in Year1 and extending into Year2, X and Y began negotiating a purchase agreement for the acquisition of certain real property. In connection with this acquisition, X and Y engaged the services of two different law firms to handle different aspects of the transaction. Each law firm had assumed that the other law firm would file Form 8875, Taxable REIT Subsidiary Election, on behalf of X. As a result, no Form 8875 was filed. X and Y discovered the failure to file the Form 8875 in Month2.

X and Y have made the following representations:

(1) The granting of relief under § 301.9100-3 would not result in X or Y having a lower tax liability in the aggregate for all years to which the election applies than each would have had if the election had been timely made (taking into account the time value of money).

(2) Neither X nor Y knowingly chose not to file the election.

(3) Neither X nor Y used hindsight in requesting relief.

(4) Finally, X and Y represent that they are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662. X has submitted the affidavit of X's Chief Financial Officer attesting to and supporting the facts and representations underlying this ruling request.

RULINGS REQUESTED

1. X requests an extension of time under § 301.9100-3 to make a late entity classification election under § 301.7701-3 to be treated as an association taxable as a corporation effective as of Date.
2. X and Y request an extension of time under § 301.9100-3 to make a late election under § 856(l) to treat X as a taxable REIT subsidiary of Y effective as of Date.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(1)(i) provides that, unless the entity elects otherwise, a domestic eligible entity is a partnership if it has two or more members.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Section 856(l) provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a taxable REIT subsidiary. To be eligible for treatment as a taxable REIT subsidiary, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. Section 856(l)(2) provides that the term "taxable REIT subsidiary" includes, with respect to any REIT, any corporation (other than a REIT) with respect to which a taxable REIT subsidiary of such trust owns directly or indirectly securities possessing more than 35 percent of the total voting power of the outstanding securities of such corporation, or securities having a value of more than 35 percent of the total value of the outstanding securities of such corporation. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (Service) announced the availability of Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a taxable REIT subsidiary. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. The instructions further provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service. Officers of both the REIT and the taxable REIT subsidiary must jointly sign the form.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code ("Code") except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the

Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time to elect to be treated as an association taxable as a corporation for federal tax purposes, effective Date. In addition, X and Y are granted an extension of time to elect to treat X as a taxable REIT subsidiary of Y, effective Date. The Form 8832, Entity Classification Election, and Form 8875, Taxable REIT Subsidiary Election, must be filed no later than 60 days from the date of this letter with the appropriate service center. A copy of this letter should be attached to each form. Copies are enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code and the regulations thereunder. Specifically, no opinion is expressed with regard to whether Y otherwise qualifies as a REIT under subchapter M of the Code.

In addition, no opinion is expressed with regard to whether the tax liability of either Taxpayer or REIT is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director=s office will determine such tax liability for the years involved. If the director=s office determines that such tax liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (3):

2 Copies of this letter

Copy for § 6110 purposes